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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,239	03/25/2004	Adrian Eich	34123/US	6686
7590	12/28/2005		EXAMINER	
David E. Bruhn, Esq. DORSEY & WHITNEY LLP Intellectual Property Department 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402-1498			WITCZAK, CATHERINE	
			ART UNIT	PAPER NUMBER
			3767	
DATE MAILED: 12/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/809,239	EICH ET AL.
	Examiner Catherine N. Witczak	Art Unit 3767

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 December 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11, 13-15, 17-20 and 22-31 is/are rejected.
- 7) Claim(s) 12, 16, and 21 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/25/04</u> .	6) <input type="checkbox"/> Other: _____.

12-8-05

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-11 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Eilersen (US 6,669,090).

Claim 1: Eilersen discloses in Figure 1a an ampoule (10) comprising at least two recognition elements (101 and 102) arranged asymmetrically relative to the ampoule.

Claim 2: Eilersen discloses in Figure 1a recognition elements (101 and 102) arranged at one end of the ampoule.

Claim 3: Eilersen discloses in Figure 1a an ampoule (10) having a generally central axis (11) and the positions of the recognition elements (101 and 102) arranged on a circle concentric with respect to the axis.

Claim 4: Eilersen discloses in Figures 1a-1d a plurality of predetermined positions where the recognition (101-114) elements can be arranged.

Claim 5: Eilersen discloses in Figure 1d a plurality of recognition elements (110-114) being provided.

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**Claim 6:** Eilersen discloses in column 2, lines 42-48 recognition elements arranged at predetermined positions.

**Claims 7 and 8:** Eilersen discloses in column 4, lines 40-49 a plurality of reference recognition provided on the cartridge.

**Claim 9:** Eilersen discloses in column 4, lines 29-39 a cartridge with a central axis and a recognition element provided along a circle concentric with respect to the axis.

**Claim 10:** Eilersen discloses in column 3, lines 11-17 the recognition elements being based on electrical principles.

**Claim 11:** Eilersen discloses in column 3, lines 11-17 the recognition elements consisting of conductive structures.

**Claim 13:** Eilersen discloses in column 2, lines 5-8 the recognition element may be written on.

2. Claims 14, 15, 17-20, ~~22~~ and 25-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Hjertman et al (US 2002/0032429).

**Claim 14:** Hjertman et al disclose an administering device comprising at least two recognition elements arranged in predetermined positions asymmetrically relative the ampoule (Fig 5: 51 and 53) and at least two sensors at predetermined positions in order to recognize the recognition elements in page 11, paragraph 95.

**Claim 15:** Hjertman et al disclose an administering device comprising at least two recognition elements arranged in predetermined positions asymmetrically relative the ampoule (Fig 5: 51 and 53) and at least one sensor which can be moved relative to the ampoule in page 8, paragraph 65, lines 9-11.

Claim 17: Hjertman et al disclose in page 5, paragraph 44 that the ampoule can be couple to the administering device through a thread.

Claim 18: Hjertman et al disclose in page 7, paragraph 64 a positioning elements for positioning the sensors in the administering device.

Claim 19: Hjertman et al disclose in page 5, paragraph 46 transmitters for transferring signals between the recognition elements and the sensors.

Claim 20: Hjertman et al disclose in page 6, paragraph 48 that the sensors are one of a group consisting of Hall, optical, electrical and mechanical sensors.

Claim 22: Hjertman et al disclose in page 4, paragraph 38 that a motorized pump may be provided which can automatically inset the ampoule.

Claim 25: Hjertman et al disclose an administering device comprising at least two recognition elements arranged in predetermined positions asymmetrically relative the ampoule (Fig 5: 51 and 53) and an administering device comprising at least two sensors at predetermined positions that recognize the recognition elements page 11, paragraph 95.

Claim 26: Hjertman et al disclose an administering device comprising at least two recognition elements arranged in predetermined positions asymmetrically relative the ampoule (Fig 5: 51 and 53).

Claim 27: Hjertman et al disclose at least two sensors at predetermined positions in order to recognize the recognition elements in page 11, paragraph 95.

Claim 28: Hjertman et al disclose at least one sensor that can be moved relative to the ampoule in page 8, paragraph 65, lines 9-11.

**Claim 29:** Hjertman et al disclose an administering device comprising at least two recognition elements arranged in predetermined positions asymmetrically relative the ampoule (Fig 5: 51 and 53).

**Claim 30:** Hjertman et al disclose at least two sensors at predetermined positions in order to recognize the recognition elements in page 11, paragraph 95.

**Claim 31:** Hjertman et al disclose at least one sensor that can be moved relative to the ampoule in page 8, paragraph 65, lines 9-11.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Packman (EP 1,095,668) as applied to Hjertman et al above.

Hjertman et al disclose the claimed invention except for a multiplexer connected to the sensors and a display device for displaying ampoule type as detected by the sensors.

Packman teaches that it is known to use a multiplexer connected to sensors as set forth in columns 8 and 9, lines 56-1. Packman does not explicitly state why the multiplexer is used, but it appears that it is used to provide a way to process data collected from the ampoule. It would have been obvious to one having ordinary skill in that art at the time the invention was made to modify the system as taught by Hjertman et al with a multiplexer as taught by Packman, since such a modification would provide the system with a way to process data collected from the ampoule.

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Packman also teaches that it is known to use a display device as set forth in column 9, lines 25 to provide a warning system when sensors reading ampoule information are not in agreement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Hjertman with a display as taught by Packman, since such a modification would provide the system with a warning system when sensors reading ampoule information are not in agreement.

*Allowable Subject Matter*

4. Claims 12, 16 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine N. Witczak whose telephone number is (571) 272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Catherine Witczak

Junior Examiner

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 12-8-05

KEVIN C. SIRMONS  
PRIMARY EXAMINER



